



OFFICE OF THE
BOARD OF APPEALS
TOWN OF DUNSTABLE
TOWN HALL
511 MAIN STREET
DUNSTABLE, MA 01827-1313

Approved
August 21, 2008

Schembechler Hearing
June 12, 2008

Members Present: Wesley Goss, Chairperson
Alice Ekstrom, Member
Judith Thompson, Member
Leo Tometich, Member
Al Horton, Associate Member
Lisa O'Connell, Secretary, Associate Member

Members Absent: Joshua West, Clerk

Petitioners Present: Geoffrey and Amy Schembechler, 36 Parkhurst Lane, Dunstable
Brian Weilbrenner (Builder), 20 Massapoag Way, Dunstable

This meeting's intent is to file a formal decision with the Town Clerk regarding the application of Brian Weilbrenner for Geoffrey Schembechler for the property located at 12 Massapoag Way, Dunstable, MA for a variance from the Dunstable Zoning By-laws, Sections 4.2 and 4.3 alteration, reconstruction, extension or structural change of a nonconforming structure or lot, and Sections 11.1 and 11.3 dimensional lot requirements.

Wes Goss called the meeting to order and reconvened the hearing at 7:02 p.m.

Wes Goss said that he had been in contact with Town Counsel. The petitioner has two options. He may withdraw the petition on the variance without prejudice. A variance is a hardship on the land and no case for hardship has been made evident to the board. Or, the petitioner can see if the board wishes to continue a bit to see if the lot in question could be a lawful lot in the first place and would not require a variance.

Geoff Schembechler said that he would like the Board to continue, if it so wishes, to see if the property would be a legal lot.

Wes Goss asked if the Board wished to continue further in this matter to see if the lot is a lawful lot as part of this petition.

The Board wanted to continue with the hearing in the matter.

The Board reviewed the two opinions from Town Counsel dated May 29, 2008 and June 12, 2008, along with Dunstable Zoning By-law section 4.4 and Massachusetts General Laws Chapter 40A section 6.

Discussion took place regarding how DZBL section 4.4 could be interpreted to mean that a presently nonconforming lot would be deemed buildable if it was conforming to the by-laws in effect at the time the property was established in separate ownership, in this case 1959. Reference was made to Town Counsel's opinion regarding the parallel provisions of Section 4.4 and the fourth paragraph of Chapter 40A, Sec. 6. Both of them are concerned with grandfathered building lots. Town Counsel advised that the courts have held Section 6 to pertain only to vacant lots. If a lot included a building that was demolished or burned, the lot must have been in compliance with the applicable regulations at that time. Since the building on this lot burned in 1978, when the regulations required two acres and two hundred feet of frontage, the lot cannot be saved under the state law provisions.

Town Counsel also advised that it might be possible to find that Section 4.4 provided more liberal protection than the state law provision. This would be because the state law section focused on *any zoning amendment*, and provided when such an amendment *would* or *would not* apply to a lot. The court's holding as to what kinds of lots would be entitled to consideration was a secondary determination. However, the Dunstable provision focused on the *lot*, defining it as one in compliance when separated in ownership. It did not require any continuing state of vacancy in order to be a lot entitled to protection. The secondary provision in the Dunstable by-law section was to provide that zoning amendments did not affect lots meeting the primary definition.

Wes Goss said the house was destroyed in 1978, but since DZBL section 4.4 does not mention vacancy of the lot, it would not disqualify the lot from consideration under this by-law if the Board chose to recognize the more liberal interpretation suggested by Town Counsel.

The Board agreed with this finding.

Leo Tometich pointed out MGL Chapter 40A, section 6 at the end of the fourth paragraph:

...The provision of this paragraph shall not be construed to prohibit a lot being built upon, if at the time of the building, building upon such lot is not prohibited by the zoning ordinances or by-laws in effect in a city or town.

Wes Goss asked the Board if they were inclined to believe that the lot in question was established in separate ownership in 1959, and has continued to be in separate ownership.

The Board agreed with this finding.

Wes Goss pointed out that the frontage requirement in the “Camp Lot District” in 1959, where the lot is located, was fifty (50) feet. However, he referred to the Town Counsel’s opinion and said that there was no mention in the 1947 by-law of where the 50 feet of frontage was to be measured. He suggested that the Board consider the frontage to mean on a traveled way and not on the pond. Applying the rule to this lot, the frontage is 76.50 feet.

The Board agreed with this finding.

Wes Goss asked the Board if they wanted to adopt the interpretation of DZBL section 4.4 to mean that the property would be a legal nonconforming lot and in compliance with the by-laws at the time – 1947 – which required 5,000 square feet of area and 50 feet of frontage.

The Board agreed with this finding.

Alice Ekstrom motioned to vote on whether the applicant’s lot at 12 Massapoag Way is a legal nonconforming lot according to DZBL section 4.4. Leo Tometich seconded the motion.

The vote was taken as follows:

Wesley Goss – a legal nonconforming lot
Leo Tometich - a legal nonconforming lot
Judy Thompson - a legal nonconforming lot
Al Horton - a legal nonconforming lot
Alice Ekstrom - a legal nonconforming lot

Alice Ekstrom motioned that the applicant’s lot at 12 Massapoag Way has not shown any entitlement to a variance from any provision of the Zoning by-law; but that it does not need any, as the Board finds that it is a buildable lot pursuant to Section 4.4 of the DZBL. Judy Thompson seconded the motion.

The vote was taken as follows:

Wesley Goss – agree
Leo Tometich – agree
Judy Thompson – agree
Al Horton – agree
Alice Ekstrom – agree

Al Horton motioned to close the hearing. Judy Thompson seconded the motion and all were in favor. The hearing was closed at 7:39 p.m.